Supreme Court, U.S.
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No. 96-145

In The
Supreme Court Of The United States
October Term, 1996

UNITED STATES OF AMERICA
EX. REL. DILIP K. PAUL,
Petitioner

v.

U. S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION and PARSONS, BRINKERHOFF, QUADE & DOUGLAS, INC., PB-KBB, INC. and BATTELLE MEMORIAL INSTITUTE,
Respondents

On Petition For A Writ Of Certiorari
The United States Court Of Appeals
For The Fifth Circuit

REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

Petitioner hereby brings to the court's attention a number of factually erroneous and misleading assertions made in the Brief in Opposition.

Misstatements made under "JURISDICTION":

In its statement of jurisdiction, respondent Battelle Memorial Institute (BMI) stated that this court lacked jurisdiction to try False Claims Act (FCA) related issues arose prior to 1986 amendment. This assertion is erroneous as this court has already decided in Gravitt v. General Electric Co., S.D.Ohio 1988, 680 F.Supp 1162, appeal dismissed 848 F.2d 190, certiorari denied 109 S.Ct. 250, 102 L.Ed.2d 1239., that the 1986 amendment of FCA applies retroactively.

BMI then asserted that petitioner Paul is not the original source of information on which the instant case is filed. BMI's this assertion is not only untrue, it is also fraudulent. The courts below checked this fraudulent and rejected BMI's contentions on this issue. Petitioner has submitted written evidence which shows he is not only the sole and original source of information upon which this action is based, but also the Government had no information of BMI's and its subcontractors' defrauding the United States.

PROJECT HISTORY.

BMI, masquerading as a Tax Exempt

Organization, received Department of Energy's contract for managing the Nuclear Waste Isolation project. It did not have the necessary background or integrity to undertake such responsible operation. From 1969, it had squandered billions of tax payers' dollars in its sham undertaking. It had not only conspired with PBQD/PB-KBB in defrauding the United States in the instant contract. It had entered a number of other contracts such as Basalt Waste Isolation Project, Compressed Air Energy Storage Project, with the same group of subcontractors, and in all of these case the United States have been defrauded. Consequently all of the projects collapsed and the United States lost money in the scheme. It is a pattern frauds and it is a racket. Battelle's untrue and misleading reply brief fully reflected its true character. The court may note that PB-KBB admitted to the Federal Mine Safety and Health Review Commission (FMSHRC) on July 28, 1983, that it is not a mining company, that it had lied in its bidding document as to its qualification to do the contracted for job, and that it did not care what the Government do with its fraudulent designs, Battelle went ahead and entered into more and more repeated fraudulent contacts with this group, until all of the contracted for the projects collapsed. Battelle admitted in the courts below that it gathered all of the litigating documents between the petitioner and PB-KBB, and obviously was aware of the PB-KBB's aforesaid judicial admissions. After knowing about PB-KBB's submitted false claims, Battelle along

with PBQD/PB-KBB, swindled the United States for another five years, 1983-1988. Needless to say, the Government could not, and cannot in future, realize any benefit from this scams. This group failed to produce a single piece of paper which is useful to the Government. Now they are fighting to keep their misdeeds hidden from the courts review.
The Congress, while amending the FCA in 1986, intended that the cheaters to be held liable for <u>all</u> consequential damages suffered by the United States as a result of their fraudulent schemes. For that reason, Battelle's argument under it Jurisdiction" heading is futile. It and its cheating buddies will be found liable for <u>all</u> foreseeable damages suffered by the United States whether occurred prior to 1986 or after 1986.

Further, the Congress, unequivocally and repeatedly stated in the litigation history and in the statute that the United States District Courts will have the jurisdiction to try False Claims Act related cases. In the Legislative history, P.L. 99-562, in Section 6, 31 U.S.C. 3734, while enacting the whistleblower protection provision in the FCA, the Congress stated on [page 35],

> "Jurisdiction for any actions under section 3734 of the False Claims Act <u>SHALL BE IN FEDERAL DISTRICT COURT"</u> [Emphasis added].

This court should defer to the Congressional expressed intent while deciding the jurisdictional issues of

this case. This court should reverse the lower courts' Unconstitutional holding that the state court has jurisdiction to try the instant case, disregarding Congresional enactments.

Petitioner's response under ARGUMENT.

1. Reply to the District Court correctly denied Paul's motion to dismiss under Rule 60(b) of the Federal Rules of Civil Procedure.

A. Under the Standard of Review, BMI stated the Rule under 60(b),

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: --- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) frauds (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.....

The discussion and argument put forward

by Battelle under this section is misleading, misconstrued and erroneous. The courts below have no authority to upheld a void judgment. The two cases did not originate from the same sets nucleus of operative facts. The courts below were presumptuous. The instant judgment is void because the state Court lacked subject matter jurisdiction, and in personam jurisdiction to try the instant case. Hence the doctrine of res judicata could not be utilized. The courts below reached a decision first and then went back and try to justify their Unconstitutional actions by random process of elimination. To the courts below, the end justified the means, instead of other way around, and hence this court should review their decisions.

Further, the doctrine of res judicata in the instant case is utilized unconstitutionally, unlawfully, erroneously, and disregarding material evidence on record. The courts below refused discovery requests and it presumed the judgment. That judgment is without due process, and hence it is void.

VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS.

Further, petitioner's rights in the instant case is protected under the False Claims Act. The courts below. by denying due process in the instant case, violated petitioner's protected rights guaranteed under the Fifth and 14th Amendments of the United States Constitution. The courts below stated arbitrarily that

petitioner lost an issue by not arguing. If that is the case, even by their own holdings, petitioner had protected rights. The courts below denied that issue to him arbitrarily on July 29, 1994, when the First Summary Judgment was issued by the district court. In that case, when the court issued warning of sanction, it violated petitioner's liberty interests as well, without due process. The courts below, by their rulings, not only encouraged unlawful activities, but also denied petitioner's rights guaranteed under the United States Constitution. This court has a duty protect the petitioner from arbitrary court actions.

B. Reply to Jurisdiction of the State Court.

As already discussed under the issue of jurisdiction, the Congress did not give the state courts jurisdiction to try the instant case.

1. Reply to The Alleged Absence of Indispensable Parties In the State Court Does not Impact the Validity of the Texas judgment.

petitioner has already discussed this issue in his main brief. The Texas judgment is void.

Further, the instant judgment declaring res judicata is void, because both of the cases did not originate from same sets of facts. The Canadians are an indispensable party in the instant case as they are the partial assignee of the

Battelle/PBQD-PB-KBB contract.

2. Reply to Paul has Effectively abandoned his contention that the state court lacked jurisdiction over contract negotiated in other states by failing to brief it on appeal to the Fifth Circuit.

Petitioner did not abandon the issue. He brought and discussed the issue it fully. The jurisdictional issue is addressed as shown below:

"ISSUE NO. 3: Whether Harris County District Court has the authority to try a case arose under the False Claims Act, where intentional torts and frauds have been perpetrated against the United States in Utah, in Texas, in Louisiana and in Mississippi, by people who are undocumented foreign citizens?"

"STANDARD OF REVIEW: Gray V. American Radiator & Standard Sanitary Corp, 22 Ill 2d 432, 176 NE 2d (1961),"

"Murphy v. Erwin-Wassy, Inc., 460 F. 2d 661, 664 (1st Cir. 1972) "

"Requirements of the United States Constitution: Article III, Section 2."

In argument on this issue, petitioner stated,

"ARGUMENT ON ISSUE NO. 3

"HARRIS COUNTY DISTRICT COURT DID NOT HAVE AUTHORITY TO TRY A CASE AROSE UNDER THE FALSE CLAIMS ACT, WHERE INTENTIONAL TORTS AND FRAUDS HAVE BEEN PERPETRATED

AGAINST THE UNITED STATES IN UTAH, IN TEXAS, IN LOUISIANA AND IN MISSISSIPPI, BY PEOPLE WO ARE UNDOCUMENTED FOREIGN DOMICILES."

"As per Gray V. American Radiator & Standard Sanitary Corp, 22 Ill 2d 432, 176 NE 2d (1961), and as per Murphy v. Erwin-Wassy, Inc., 460 F. 2d 661, 664 (1st Cir. 1972) the jurisdiction ti try the case of intentional torts liabilities in those counties where the victims would be affected. Hence the intentional torts or criminal mine design would not affect the people of Harris County, but would affect the people of the seven counties spreading over four states where the Federal facility sites are located. So the jurisdiction to try the instant case would be in those seven counties and not in the Harris County, Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 24 L.Ed. 565 (1877). This would be the case if the perpetrators were all U.S. domiciles".

"But when the perpetrators were foreign citizens, domiciled in Canada and in other countries, the Harris County court would lack the in personam jurisdiction over the parties to try the case and the instant case can only be tried in a U.S. court."

"Further, the solicitation, bidding and the execution of the Battelle-PBQD/PB-KBB contracts at issue were done from Columbus, Ohio.

Under Burger King v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed 2d. 578, the jurisdiction to try the instant case will be in Ohio. Again, Harris county district court could not try the instant case."

3. Reply to Paul's argument that the State Court did not have jurisdiction over claims that arose in other jurisdiction does not impact the validity of that judgment.

Even if the Texas judgment is valid, res judicata cannot be applied in the instant case. To apply res judicata to have preclusive effect in the instant case, it must be shown that both of the cases could have been brought and tried in the Texas case, which could not be shown. Hence res judicata was improperly applied in the instant case.

C. Reply to Paul improperly raises the district court's underlying decision which is not reviewable in the instant appeal.

The district court violated petitioner's rights guaranteed under the Fifth amendment of the United States Constitution, which is reviewable by this court at any time. Further, the judgment of the district court is void, which is reviewable by this court, when affirmed by the Fifth Circuit Court of appeal.

D. Reply to District Court did not abuse its discretion in denying Paul's rule 60(b)(3) motion, because even assuming

that paul could establish that the defense of his state case was predicated upon factually false evidence, Paul has failed to demonstrate that he was prevented from fully and fairly presenting his state court case.

BMI's argument under this issue is fraudulent. Paul was in California, when the fraudulent evidences were presented to the jury. He was kept away when the fraud was perpetrated on the court. So BMI's argument here is invalid. Further, as per the Supreme Court's holding in Hazel-Atlas Glass Company v. Hartford-empire Company, 322 US 238, the so-called extrinsic and intrinsic fraud is eliminated. the court below should have granted petitioner's motion. Further, petitioner's motion was under 60(b)(4) as well, which deals with void cases, where the courts have no discretion but to grant relief from judgment.

CONCLUSIONS

For the foregoing, the writ of certiorari should be granted.

Respectfully submitted

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